IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4558 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARISHCHANDRA M JHALA

Versus

GUJ WATER SUPPLY & SEWERAGE BOARD

Appearance:

Mr. Nikhil Daniel for MR BP TANNA for Petitioner.

Ms. K.J. Vora for MR KH BAXI for Respondent No.1.

Ms. Manisha Lavkumar AGP for Respondent No. 2

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 06/12/2001

ORAL JUDGEMENT

The petitioner in this petition has challenged the orders dated 19.5.1988 and 8.8.1988 transferring the petitioner from Ahmedabad to Gandhinagar. The petitioner has also prayed for the interim relief directing the respondetn No.1 not to transfer the petitioner from his present post and has also prayed for an interim relief to the effect that the respondents be restrained from working on the present post at Ahmedabad. The petition

was admitted and interim relief was granted by this Court and that interim relief is in force all throughout. It appears that by aflux of time the petition might have become infructuous but neither the petitioner nor the respondent No.1 is having any instruction to that effect. Even otherwise, an identical issue was involved in Special Civil Application No. 6646 of 1988, and this Court (Coram: H.K. Rathod, J.) vide judgment dated 3.3.2000 has observed as under :

> "In view of the above decision, in case of transfer on deputation, consent of the employee would be required. In the present case, the respondents have not filed any affidavit in reply and have not pointed out that before transferring the petitioner from the medical branch to the health department on deputation, consent of the petitioner was obtained or not. In absence of such consent, and also in view of the decision of this court in the case of Bhagwatiprasad (supra), this petition is required to be allowed. Same is accordingly allowed. Impugned order dated 22nd September, 1988 annexure "A" to the petition is quashed and set aside. Rule is made absolute accordingly with no roder as to costs."

2. Having regard to the facts and circumstances of the case, and having regard to the legal position discussed in the abovereferred judgment, the petition deserves to be allowed. The impugned orders dated 19.5.1988 and 8.8.1988 are quashed and set aside. Rule is made absolute accordingly with no order as to costs.

rmr. [K.A. Puj, J.]